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PUNISHMENT TO FIT THE CRIME.

WITHIN recent years lynchings in the United States have been the cause of much discussion and alarm, not only in our own country, but throughout the civilized world. The want of police protection in rural districts, the slowness, uncertainty, and expense of the courts in dealing with criminals, on the one hand, and the practical certainty of the failure of the state to prosecute and punish the lyncher, on the other, are the most prominent of the reasons that have been brought forward to account for the prevalence of lynching. Editors, lawyers, preachers, have appealed to the people, have denounced the practice, and have prophesied direful things as the result of such lawlessness. In spite of everything, however, the fact remains that lynchings continue to shock the moral sense of the world; but, what is even more alarming, lynch law is being resorted to, not only in communities newly organized, where it originated, but in communities where courts of justice have been established for generations.

Attempts have sometimes been made to justify lynching as the expression, on the part of decent and orderly citizens, of the instinct of self-preservation, but those who are familiar with communities in which lynchings have occurred know that decent and orderly citizens are rarely a part of the mob. But whether the mob is swayed by the orderly or by the vicious element of the neighborhood, in either case the lynching is the outgrowth of a feeling that the state does not punish the criminal according to the atrocious nature of his crime. Lynching is only one form of the expression of a widespread opinion that the punishment inflicted by the state often bears little relation to the nature of the offense. It is the purpose of this article to consider the crime of murder and to advocate the punishment that fits it.

In every case of lynching the methods of law and order, established by organized society for the punishment of crime,

are ruthlessly swept aside by the frenzy of a mob, which thrusts the criminal, or supposed criminal, into eternity; and in this way the rude instincts of savage justice, which call for retaliation by personal injury to the wrongdoer, are satisfied. While lynchings are often the outcome of crimes other than murder, nevertheless the infliction of capital punishment by the mob is usually associated with the violation of the Mosaic command, "Thou shalt not kill"—the mob justifying its action, in part at least (even as does the state), by the command that "Whoso sheddeth man's blood, by man shall his blood be shed" (Gen. 9 : 6).

It is sometimes claimed that the great majority of lynchings are caused by a "single crime," one more revolting than murder; but the claim is false. An examination of the statistics of the Chicago *Tribune*—the only statistics that have been carefully kept for a number of years—proves this conclusively. There were 107 lynchings in 1899—103 of them in the South. Forty-four of these persons were accused of murder, 11 of complicity in murder, 11 of rape, and 6 of attempted rape. In 1898 there were 127 lynchings—118 in the South. Of these victims 13 were suspected of murder, 61 were accused of murder, 16 of rape, 7 of attempted rape, and 1 of complicity in rape. One hundred and sixty-six persons were lynched in 1897—all but 20 of them in the South. Sixty-nine of these were accused of murder, 1 of concealing murder, 23 of rape, and 9 of attempted rape. The figures for these three years taken together show that 50 per cent. of the victims of lynch law were accused of crimes connected with murder, and 18 per cent. of rape.

Of the crimes alleged as the immediate cause of lynching, murder, therefore, is the chief; but the recourse to lawlessness on account of the crime of murder has so brutalized large numbers of men that they have not hesitated to resort to lynching for minor crimes, or even for "bad reputation."

During the fourteen years, 1886–99 inclusive, there were 2,224 lynchings in the United States, and 1,559 legal executions; or, stating it in another way, for every two men who were legally executed three were lynched. In the same period the total number of murders and homicides was 86,825. The largest

number of murders in any one year of this period was 10,652, in 1896. The largest number of lynchings was 235, in 1892. The largest number of legal executions was 132, in 1894, and again in 1895. In 1886 there were 1,449 murders and 83 legal executions — 17 of the former to 1 of the latter. In 1896 the ratio was 87 to 1; in 1898, 72 to 1; and in 1899, 50 to 1. The ratio for the whole period was 56 to 1. In 1899 there were 6,225 murders and homicides, 107 lynchings, and 131 legal executions. In 1898 there were 7,840 murders and homicides, 127 lynchings, and 109 legal executions.[1] As compared with previous years, there was a marked decrease in the number of murders in 1898 and 1899, which may have been due to the excitement of war. A similar decrease has been noticed before in time of war. Notwithstanding the decrease of the last two years, the annual number of murders at the end of this period of fourteen years under review is more than four times as great as at the beginning; the number of legal executions only one and a half times as great. During the same period the population has increased about 25 per cent. We have no means of testing these statistics of the Chicago *Tribune*, but, after making a liberal allowance for the incompleteness of returns, especially for the earlier years, there can be no doubt that the increase in the number of murders is out of all proportion both to the number of legal executions and to the population.

It is true that the death penalty is forbidden in five states (Maine, Rhode Island, Colorado, Michigan, and Wisconsin), but even this does not account for the failure of legal executions to keep pace with the increase in the number of murders. The legislative action of these five states does prove, however, that there is a large class of persons who represent a public opinion that is more and more opposed to the punishment of the murderer by simply killing him. There is another class of persons to whom the most brutal murderer is the hero of the hour, provided he shows "nerve;" and the greater the outrage he has committed, the more he is glorified. He is made the

[1] In 1900 there were 8,275 murders and homicides, 115 lynchings, and 119 legal executions — 70 murders to 1 legal execution.

recipient of countless tokens of a maudlin sentimentality; and tender-hearted people with the best intentions give aid and countenance to all sorts of devices to defeat the decrees of the courts.

All these things make it difficult to carry out the intention of the law that the murderer shall be executed; and as a result the risk of death in 1898, and for a number of years previously, was less for the murderer than it is for our mothers in bringing children into the world; for, according to Mulhall, 1½ per cent. of all mothers die sooner or later in childbirth. Is it not a striking commentary on our civilization that the brutal murderer in driving life out of the world is subjected to less risk of death than the mother in bringing life into it? Society, the state, continues because our mothers are willing to run that risk. Do we regard murderers of more importance than mothers?

The almost certain ultimate escape of the murderer, when tried according to the forms of the law, is the chief thought in the mind of the mob when it sweeps aside the established forms of law and order. It justifies its action on the ground that its execution of the criminal avoids both the risk of escape and the piling up of the costs of an extended trial or trials. From the mob's point of view the state has everything to gain and nothing to lose by lynching; for, after all the time and trouble the state may take, the punishment that it inflicts is the same as that which is ever ready in the hands of the mob. The mob sees no difference between the two; and thus it happens that in a civilized state there is a resort to the methods of savage justice, because the state does not provide a punishment that fits the crime. Mob law is a menace to the life of the state, and therefore to the individual and his property; and where the growth of mob violence is unchecked the result is social disintegration, anarchy in its worst sense, and, finally, the extermination of civilization, leaving a country inhabited by a few scattered savages.

Let us now briefly consider the nature of punishment. Punishment is a consequence of the violation of law, whatever may be the nature of the law—spiritual, physical, human. The fundamental idea of law involves the idea of punishment; for that

which may be violated with impunity is not law. The existence of society as an organized state depends on law, whether it be the law of physical force or the law of spiritual force — the law of love; and therefore the state, in order to exist, must punish those who violate its laws. And this the state — organized society — has attempted from the dawn of civilization: it ordains that the violator of its laws shall suffer either physically or by the denial of certain rights and privileges, or both. But it is also necessary that punishment inflicted by the state should be just, that it should have some relation to the nature of the offense — a principle which cannot be successfully disputed, and which is generally admitted by those who have given the matter any attention. The violation of the laws of nature is followed by penalties directly related to the offense. The mere stating of this fact is sufficient without argument.

In primitive societies punishment for murder is largely in the hands of the family, clan, or tribe to which the victim belonged. The idea is purely one of vengeance, which gives rise to all sorts of cruel tortures, simply for their own sake. In civilized societies the crime is regarded not so much as an offense against an individual as one against the state, and therefore the state regulates and inflicts the punishment The life of the state depends on the life of its citizens; and, in self-defense, the state retains its right of removing those who have ruthlessly destroyed the lives of their fellows, and who have shown by their conduct that they have no more right to be at large among men than tigers and wolves.

In the infliction of punishment by the state three elements have been more or less clearly recognized: first, the reparation of the wrong that has been done, which includes the idea of retribution; second, the reformation of the wrongdoer; and third, the warning of would-be criminals of the consequences of crime — to deter them. These ideas are applied in crimes against property; the stolen goods, if discovered, are returned to their owner, and the thief is imprisoned for his own reformation, and to serve as an "awful example" for others, as well as for himself. Crimes against the person are often punished by

fines, damages, and by imprisonment — the idea of reparation and reformation. It is, alas! too true that these fundamental ideas are imperfectly applied; nevertheless they are the basis of our penal codes.

The International Penitentiary Congress which met in London in 1872 unanimously agreed, with reference to the treatment of criminals, that "the prisoner must be taught that he has sinned against society, and owes reparation." And yet in the customary punishment of what is usually regarded the greatest of all crimes the idea of reparation sinks entirely out of sight, doubtless on the supposition that the murderer can contribute nothing toward repairing the wrong he has done; and the idea of reformation is given up wholly to "making his peace with God"—a proceeding which is often disgusting, if not blasphemous, in its nature. The punishment of murder by legal execution is of positive value only as a warning to would-be murderers, and even here its utility is sometimes doubtful; moreover, it satisfies neither the idea of reparation nor of reformation, so far as society or the state is concerned. The murderer has waged war against society, and society tries to get even with him by removing him — a negative value. It is the old idea of vengeance, the feud of blood, one degree removed from the vendetta, founded on the brutal idea of hurting the fellow who hurts you, simply for the satisfaction you may get out of seeing him suffer. The fact that the vengeance of society is inflicted in accordance with certain prescribed rules and forms does not change it in the least. It is blind and brutal vengeance still. The recognition of this want of relation between the crime and its punishment accounts in a large measure for the growing public opinion against capital punishment, to which reference has already been made.

Is there a punishment for murder to fit the crime? We have referred to the war that the murderer makes on society, as well as on the individual, in the commission of his deed of blood. The murdered man's life cannot be restored. The hanging of the murderer repairs no injury. The sacredness of human life is respected in neither case, and society receives no compensation

for the extinction of two lives, whatever those lives may have been. Nor does the substitute for legal execution, imprisonment for life, satisfy any of the true ends of punishment: no life is restored for the life that was taken; the opportunities for the "reformation" of the criminal are the same as if he were legally executed; and as a warning to others it is decidedly less, for the ultimate pardon of the prisoner is almost certain, and he knows it. On the other hand, life-imprisonment intensifies the wrong already committed, because the burden of the murderer's support and detention falls on society — a burden that must be measured in terms of individual life. Furthermore, in imprisoning the murderer for life (unless he be condemned to "separate and solitary confinement," a punishment which is unusual, as well as most cruel and soul-destroying), his vicious life is more than likely to contaminate the lives of others, who also become a burden and a prey on their fellows. And thus again is society wronged. The natural, and therefore the proper and ideal, punishment is to use the life of the murderer in such a way that the lives of human beings may be saved and, at the same time, that all the ends of justice shall be satisfied. How can it be done?

Of the total number of deaths throughout the world at least one-half are caused by diseases that should be absolutely under human control. In the census year 1889–90 the total number of deaths in the United States was 872,944. Of this number 102,199 died of consumption, 76,496 of pneumonia, 74,711 of diarrhœal fever, 18,594 of malarial fever, 27,058 of enteric (typhoid) fever, 5,969 of scarlet fever, 41,677 of diphtheria and croup; and all of these are germ diseases. Nearly 350,000 souls in a single year a sacrifice to these germ diseases alone! And there are others. Every one of these germ diseases can be prevented or controlled, if the destroyer of the germ is known and can be applied in time. The death-cries of these annual hundreds of thousands of souls should move us to stop at no half-hearted measures of relief. Almost all, if not all, of these germ diseases have been produced experimentally in animals, and serums which destroy or render harmless the germs in animals have been discovered. With the exception of diphtheria (a disease whose

death-rate has been reduced more than 50 per cent. since the discovery of antitoxin by experiments within the last few years), satisfactory serums for these deadly diseases in men are still a matter of uncertainty, if not unknown. And why? Simply because there are no human beings on whom systematic scientific experiments can be made to discover the remedy or to test supposed remedies; for all new remedies should be rigidly tested before being applied to the generality of mankind. New remedies must be tried on someone, and the state owes it to itself that it provide subjects for experimentation, so that there shall be least loss in case of failure, on the one hand, and, on the other, that generations should not be permitted to die while doctors are disputing the utility of remedies which only a few have had the opportunity of testing. Humanity demands that the failure or success of new methods of relieving human ills should be made known at the earliest possible date.

All remedies, from castor oil to antiseptic surgery, are the result of experiment, unless discovered by accident. If experiments are prohibited, medical science must remain forever practically at a standstill. Shall the state encourage progress in the increase of knowledge and the relief of human ills by providing subjects for experiment in using what is now wasted, or worse than wasted? Or shall the state continue to outlaw such progress by failing to provide investigators with proper subjects for experiment? At the present time the progress of medical science is interfered with continually by the lack of human subjects for experimentation. It is of more vital importance for the state to provide subjects for accredited investigators than it is to provide our medical colleges with subjects for dissection in the study of anatomy. So long as living subjects are not provided by the state, study for the discovery of relief of human ills is outlawed, just as the study of anatomy was outlawed when it was necessary to rob graveyards in order to get subjects for the use of students in the dissecting room. The modern investigator along these lines, as a rule, first tries his experiments on animals, and if a number of these prove successful, in fear and trembling he usually tries them on some hopeless case, under unfavorable

conditions — generally a poor hospital patient who is not likely to have friends to cause trouble in case of failure. If the patient dies, the secret is preserved in the bosom of the investigator, or shared with a few professional brethren; if the experiment is a success, all the world rejoices, and the discoverer is written down in history as a benefactor of the race, which he surely is. Nevertheless, progress must be slow and uncertain if investigation can only be carried on under such difficulties which absolutely forbid all scientific investigation in many fields. In the meantime hundreds of thousands of our fellow-men in our own country alone are dying annually of diseases that should be under our control, and all because our investigations must be confined almost exclusively to animals. And yet, is not one human life worth more than the lives of many animals? Are not the lives of hundreds of thousands of more account than the few score of murderers whose lives are thrown away annually for the sake of vengeance? We cannot afford to waste a single human life, not even the life of a murderer, because his life may be used to save countless lives.

The punishment of every condemned murderer should, therefore, be turned to account for the lasting benefit of mankind. A human experiment station is needed, and the condemned murderer is the subject on which the experiments should be made, and made repeatedly so long as he may live. His death in this way would satisfy all the ends of punishment: the majesty of the law, which he ruthlessly violated, would be vindicated; as a warning to others it would have all the deterrent value attached to the present forms of capital punishment, and probably a greater value; the opportunity for his spiritual welfare would not be diminished; and, in addition, his death would offer unlimited possibilities for the benefit of society, for repairing the injury he had wrought. In short, his punishment would have a direct relation to the offense — it would fit the crime.

The use of such living human subjects for experimental purposes would open a vast field for the relief of human ills — new and exact knowledge in anatomy, physiology, psychology, criminology, and every branch of therapeutic medicine. As is more

or less well known, some diseases and accidents affecting the mind have been successfully treated by surgical operations. There are infinite possibilities in the field of insanity alone for an experimental laboratory along the lines suggested. Experiments performed on animals have been of great service to mankind, but there is no comparison when we consider the value to be derived from such scientific experiments on human subjects.

It goes without saying that safeguards should be provided in the establishment of stations for the purpose of experimenting on human beings; for even a condemned murderer has rights which society is bound to respect. Only trained specialists of the highest order should have access to the advantages offered. In many states the trained specialists and the necessary laboratories already exist, suitable legislative action being all that is needed for beginning the work. It might be advisable, also, to season justice with mercy by offering freedom to those who survived an experiment which resulted in a discovery of great value to humanity, and whose conduct and bearing were such as to offer a reasonable guaranty of safety to society on their release.

Objection to such punishment will doubtless be made on the ground of cruelty, and that it is inhibited by the eighth amendment to the constitution of the United States, which declares that "cruel and unusual punishments" shall not be inflicted. A few years ago electrocution of a condemned murderer was considered most unusual; nevertheless the courts upheld the law of New York which substituted death by electricity for hanging. A century ago it would have been considered much more unusual (if it could have been imagined possible) to condemn a man to die by electricity than to condemn him to be a subject for experiment in a hospital or laboratory. The most common and the most useful things were once unusual. There is no reason in opposing a method of inflicting punishment simply because it may be considered unusual.

But many well-meaning people will believe such punishment to be cruel. Yet what is so cruel as ignorance? Millions suffer and hundreds of thousands die annually of diseases that should be as much under human control as is that once dreadful scourge,

smallpox, since the discovery, by experiment, of vaccination. In experimenting on murderers, in no case would their suffering be greater than that of the millions who die of disease; indeed, the suffering of the individual murderer would be less, because of the advantages of relief such an experiment station could offer. Moreover, in a large number of cases, anæsthetics would be used, and in all such instances the pain would be greatly lessened and often insignificant. Anything that offers relief to tortured millions dare not be dismissed on the ground of cruelty, because it may cause pain to a few hundred murderers.

No human being can live for any length of time in a temperature ten degrees above the normal temperature of the body, unless the conditions permit of rapid evaporation. We know the sufferings caused by the heat of the sun when the temperature of the atmosphere does not even reach the normal blood heat of man. Pass the normal temperature only a few degrees, and in a comparatively short time death frees us from the tortures of being burned alive. The result is the same whether it be the child writhing in the agonies of scarlet fever, the adult in the delirium of typhoid fever, or the tortures of the victim of that scourge whose very name strikes terror to the hearts of millions, yellow fever—all these the victims of diseases which, after slowly poisoning them, are burning them alive. Every year fevers cause more than a hundred thousand deaths in our country—victims of ignorance.

In the battle of Gettysburg the number of men killed on both sides was 5,600—an awful slaughter of human lives at which the whole world shuddered. In our own land, after suffering weeks and years of pain, the single disease of consumption is killing every month nearly twice as many people as lost their lives at Gettysburg. A slaughter equal to twenty Gettysburgs a year in our own fair land, and we stand by in silence, helpless, idle, lest we be cruel! Consumption, tuberculosis, a germ disease, claims a hundred thousand souls and more (one for every seven or eight persons who die, one for every five revolutions of the second hand of your watch) as an annual sacrifice in our country, the helpless victims wasting away day by day, hoping against hope,

while dying by inches. When this insidious disease gets a firm hold on people, science is able to do but little for them, except to prolong, for a few short years at the most, the years of suffering weakness of these victims of human ignorance. They suffer mentally and physically, while their friends and loved ones, numbering hundreds of thousands, daily feel the pangs of sympathetic woe; and yet, in the face of all this suffering, a measure that gives every prospect of discovering certain relief is opposed because it is cruel. Yea, verily, there is nothing so cruel as ignorance, the self-satisfied ignorance that permits infinite pain.

Cruelty is an evidence of weakness as well as of ignorance. The brave man and the strong man sees what needs to be done, and does it. He is not cruel. The coward sees what needs to be done, but does it not. He is cruel. We must take courage and be strong. We can conquer both crime and suffering, if we will. To conquer these is worthy of the best effort of statesmen and philanthropists; and the punishment of the murderer should be made to contribute to the same great end.

SAMUEL H. RANCK.

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